

**§ 516.6 Appearance as counsel.**

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, for example, deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27-3).

(4) The individual is a judge advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, for example, a Special Assistant U.S. Attorney, or an attorney assigned to Litigation Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

**§ 516.7 Mailing addresses.**

Mailing addresses for organizations referenced in this regulation are in appendix B to this part.

**Subpart B—Service of Process****§ 516.8 General.**

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, for example, in a civil case a summons or subpoena,

or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on Federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide guidance to law enforcement personnel in these matters.

**§ 516.9 Service of criminal process within the United States.**

(a) Surrender of personnel. Guidance for surrender of military personnel to civilian law enforcement officials is in Chapter 7 of AR 630-10 and AR 190-9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart G to this part.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

**§ 516.10 Service of civil process within the United States.**

(a) Policy. DA officials will not prevent or evade the service of process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Request for witnesses or evidence in civil proceedings. See subpart G to this part.

(c) Process of Federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be

permitted to serve Federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive Federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by state authorities on the military installation.

(2) On Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) Process of foreign courts. A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States, and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) Seizure of personal property. State and Federal courts issue orders (for example, writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or Federal court orders commanding or authorizing the seizure of private property to the same extent that state or Federal process is served.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

#### **§ 516.11 Service of criminal process outside the United States.**

Army Regulation 630-10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

#### **§ 516.12 Service of civil process outside the United States.**

(a) Process of foreign courts. In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority.

(b) Process of Federal courts. Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 USC 1781 and 1783; and, the rules of the Federal court concerned. If a DA official receives a request to serve Federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) Process of state courts. If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, for example, The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4).

(d) Suits against the United States. DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the